

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-02-KC-174
)	
Maria L. Salazar)	NAL/Acct. No. 200232560011
Licensee, Station KTCM(FM))	
Kingman, Kansas)	FRN 0003-7578-12

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 15, 2002

Released: July 18, 2002

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find Maria L. Salazar, licensee of radio station KTCM(FM), Kingman, Kansas, and owner of antenna structure number 1057462 near Spivey, Kansas, apparently liable for a forfeiture in the amount of thirty-nine thousand dollars (\$39,000) for willful and repeated violation of Sections 301 and 303(q) of the Communications Act of 1934, as amended ("Act")¹, and Sections 73.1350(a) and 17.51 of the Commissions Rules ("Rules").² Ms. Salazar is also apparently liable for the willful violation of Sections 11.35(a), 73.1125(a), and 73.3526 of the Rules.³ Specifically, we find Ms. Salazar apparently liable for operating a radio station from an unauthorized location; failing to maintain prescribed obstruction lighting on antenna structure number 1057462; failing to install and maintain Emergency Alert System ("EAS") equipment at station KTCM(FM); failing to maintain a main studio at an authorized location; and failing to maintain a public inspection file.

II. BACKGROUND

2. On April 8, 2002, as a result of receiving a complaint that station KTCM(FM) was broadcasting on frequency 100.3 MHz from an unauthorized location in Wichita, Kansas, agents from the Commission's Kansas City, Missouri Field Office ("Kansas City Office") went to Wichita, Kansas to determine if an unauthorized station was broadcasting on frequency 100.3 MHz. Once in Wichita, using standard direction finding techniques, the agents determined that a radio station was broadcasting on frequency 100.3 MHz from the Latino Boom Nightclub at 1514 West 21st Street North. The agents checked the Commission's records and determined that no license to operate a FM broadcast station from this location had been issued.

3. The agents then drove to the last known main studio address for station KTCM(FM) at 315 West D Avenue, Kingman, Kansas. In front of the building at that address was a sign imprinted with the letters "KTCM," however, the building was locked, appeared to be empty, and no one answered when the agents knocked. The agents then drove to KTCM(FM)'s authorized transmitter site near Spivey, Kansas. At the transmitter site, the agents, by using standard direction finding techniques, determined that

¹ 47 U.S.C. §§ 301 and 303(q).

² 47 C.F.R. §§ 17.51 and 73.1350(a).

³ 47 C.F.R. §§ 11.35(a), 73.1125(a), and 73.3526.

KTCM(FM) was broadcasting from the antenna structure at that location on its authorized frequency of 100.3 MHz. The programming at the transmitter site appeared to be the same as that being broadcast from the unauthorized location in Wichita.

4. While at the transmitter site, the agents inspected antenna structure number 1057462, which is owned by Ms. Salazar. The agents observed that, of the six prescribed lights on the structure, the top flashing beacon and three of the four side lamps were not lighted. The agents contacted the Federal Aviation Administration ("FAA") Flight Service Station in Wichita, Kansas, determined that no report of light outages had been made for antenna structure number 1057462, and reported the outage.

5. On April 9, 2002, after confirming that unauthorized broadcast transmissions continued to emanate from the Latino Boom Nightclub, the agents interviewed Ms. Salazar at the nightclub and inspected the station. The agents also interviewed Mr. Juan Antonio Delgado because Ms. Salazar instructed them to address their questions concerning the operation of KTCM(FM) to Mr. Delgado. Mr. Delgado stated that the studio at the Latino Boom originated programming for both KTCM(FM)'s authorized transmitter and the unauthorized station at the nightclub. In response to the agent's questioning, Ms. Salazar stated that she did not have an authorization to operate at the Latino Boom Nightclub. Also during the inspection, the agents determined that KTCM(FM) had no public inspection file and no EAS equipment.

6. On April 18, 2002, the Kansas City Office received a letter from Ms. Salazar, in which she stated that she relied on a professional broadcast engineer to ensure that her operation of KTCM(FM) was in accordance with the Act and the Rules. She also stated that she moved KTCM(FM)'s studio to Wichita on the advice of the engineer and that, because he recommended it, she thought the move was legal. Finally Ms. Salazar stated that she has ceased operating from Wichita and has moved KTCM(FM)'s studio back to Kingman.

III. DISCUSSION

7. Section 301 of the Act sets forth the general mandate that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. Section 73.1350(a) provides that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization. Although Ms. Salazar holds a Commission license to operate a broadcast station in Kingman, Kansas, on April 8 and 9, 2002, Ms. Salazar operated a radio station on frequency 100.3 MHz at 1514 West 21st Street North, Wichita, Kansas, a location from which she was not authorized to operate.

8. Section 303(q) of the Act, along with Part 17 of the Rules, requires antenna structure owners to maintain the painting and lighting of antenna structures as prescribed by the Commission. The Commission's antenna structure construction, marking and lighting requirements operate in concert with the FAA's regulations to ensure that antenna structures do not present hazards to air navigation. Generally, our rules require that antenna structures located close to airports or that are greater than 200 feet in height comply with painting and lighting specifications designed to ensure air safety.⁴ The Rules further require antenna structure owners to monitor lights daily or install automatic alarm systems to ensure lights function properly.⁵ The Rules also require that red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified.⁶ Antenna structure owners are required to maintain lighting

⁴ 47 C.F.R. § 17.21.

⁵ 47 C.F.R. § 17.47

⁶ 47 C.F.R. § 17.51.

equipment and replace or repair inoperative lights, indicators and control and alarm systems as soon as practicable.⁷ Additionally, antenna structure owners are required immediately to notify the FAA when major antenna structure lights are inoperative and cannot be repaired within 30 minutes.⁸ Ms. Salazar's antenna structure required obstruction lighting because it is greater than 200 feet in height and because the FAA recommended obstruction lighting for the structure. The agents observed that four of the six prescribed obstruction lights, including the top flashing beacon and three of four side lamps, were unlighted on April 8, 2002 at 4:30 p.m. in violation of Section 17.51 of the Rules. During the inspection on April 9, 2002, Mr. Delgado stated that he knew the lights were out for at least two weeks prior to the inspection and that he had not reported the light outage to the FAA as required. There were no logs documenting the light outages. Additionally, Mr. Delgado stated that he visually observed the lights approximately every two weeks and not on the requisite daily basis.

9. Section 11.35(a) of the Rules requires broadcast stations to have the necessary EAS equipment installed so that monitoring and transmitting functions are available during the times the station and systems are in operation. On April 9, 2002, Ms. Salazar had no EAS equipment installed at the KTCM(FM) studio. Ms. Salazar stated during the inspection that the equipment had been removed for repair and had not been replaced. There were no log entries indicating removal of the equipment for repair and there were no log entries indicating that EAS equipment had ever been installed or used. Although Ms. Salazar stated that KTCM(FM)'s engineer removed the EAS equipment for repair about 60 days prior to the inspection, the fact remains that no EAS equipment was installed at station KTCM(FM) on the day of the inspection and there is no evidence that EAS equipment had been removed for repair. In this regard, we note that if defective EAS equipment was sent out for repair in late January or early February of 2002, as Ms. Salazar stated, then a request for additional time to have the equipment repaired should have already been made to the Kansas City Office under Section 11.35(c) of the Rules,⁹ which requires that an informal request be submitted to the District Director of the FCC Field Office serving the area in which KTCM(FM) is located for additional time to repair defective EAS equipment if the repair or replacement is not completed within 60 days. No such request has been received by the Kansas City Office.

10. Section 73.1125(a) of the Rules generally requires broadcast stations to maintain a main studio at one of the following locations: (i) within the station's community of license; (ii) at any location within the principal community contour of any AM, FM, TV broadcast station licensed to the station's community of license; or (iii) within twenty-five miles from the reference coordinates of the center of its community of license. In December, 2001, Ms. Salazar admittedly moved KTCM(FM)'s main studio outside of Kingman, Kansas, its community of license, to the Latino Boom Nightclub in Wichita, Kansas. At the time of the inspection, the KTCM(FM) studio at the Latino Boom was located 27.1 miles outside of KTCM(FM)'s principal community contour. The only other broadcast station licensed to Kingman, Kansas was station KCVW(FM). The Latino Boom Nightclub is located 12.6 miles outside of the principal community contour of station KCVW(FM). Further, the Latino Boom Nightclub is 41.9 miles from the reference coordinates of the center of the city of Kingman, Kansas. Therefore, the location of station KTCM(FM)'s main studio on the date of the inspection was not any of the locations permitted by Section 73.1125(a) of the Rules.

11. Section 73.3526 of the Rules requires commercial broadcast stations to maintain a public inspection file. On April 9, 2002, no public file for station KTCM(FM) was present during the inspection and in response to the agents request to see the public file, Ms. Salazar stated that the station did not have a public file.

⁷ 47 C.F.R. § 17.56

⁸ 47 C.F.R. § 17.48

⁹ 47 C.F.R. § 11.35(c).

12. Based on the evidence before us, we find that Ms. Salazar, licensee of KTCM(FM), Kingman, Kansas, has apparently operated a radio station at an unauthorized location without the required license to operate at that location in willful¹⁰ and repeated¹¹ violation of Section 301 of the Act and Section 73.1350(a) of the Rules; failed to maintain prescribed obstruction lighting on her antenna structure in willful and repeated violation of Section 303(q) of the Act and Section 17.51 of the Rules; failed to install and maintain operable EAS equipment in willful violation of Section 11.35(a) of the Rules; failed to maintain a main studio at an authorized location in willful violation of Section 73.1125(a) of the Rules; and failed to maintain a public inspection at KTCM(FM)'s main studio file in willful violation of Section 73.3526 of the Rules.

13. Section 503(b) of the Act,¹² authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act. In exercising such authority, we are to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹³

14. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”)¹⁴ and Section 1.80 of the Rules,¹⁵ the base forfeiture amounts for the listed violations are: \$4,000 for operation of a radio station at an unauthorized location;¹⁶ \$10,000 for failure to comply with prescribed lighting and marking requirements;¹⁷ \$8,000 for failure to have EAS equipment installed and operational;¹⁸ \$7,000 for violating the main studio rule;¹⁹ and \$10,000 for violating the public inspection file rule.²⁰ Thus, the total

¹⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹¹ See *id.* at 4388; as defined in the Act, the term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

¹² 47 U.S.C. § 503(b).

¹³ 47 U.S.C. § 503(b)(2)(D).

¹⁴ 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

¹⁵ 47 C.F.R. § 1.80.

¹⁶ See, e.g., *M.C. Allen Productions*, 16 FCC Rcd 21138, 21143 (Enf. Bur. 2001); *Arvada Excavating Company, Inc.*, 15 FCC Rcd 13590, 13590 (Enf. Bur. 2000) (both imposing \$4,000 forfeitures for operating from an unauthorized location).

¹⁷ See, e.g., *Tidewater Communications, Inc.*, 17 FCC Rcd 8586, 8586 (Enf. Bur. 2002); *Spectrasite Communications, Inc.*, 16 FCC Rcd 17668, 17668 (Enf. Bur. 2001) (both imposing \$10,000 forfeitures for violating the Commission's prescribed lighting and marking requirements).

¹⁸ See, e.g., *Radio One Licenses, Inc.*, 16 FCC Rcd 15326, 15327-15328 (Enf. Bur. 2001), *recon. denied*, 17 FCC Rcd 1724 (Enf. Bur. 2001), *application for review pending*; *Arnold Broadcasting Company, Inc.*, 16 FCC Rcd 13600, 13602 (2001) (both imposing \$8,000 forfeitures for not having EAS equipment installed and operational).

¹⁹ See, e.g., *American Broadcasting Educational Foundation*, 15 FCC Rcd 8630, 8630 (Enf. Bur. 2000) (imposing a \$7,000 forfeiture for violation of the main studio rules).

²⁰ See, e.g., *Radio One Licenses, Inc.*, at 15330 (imposing a \$10,000 forfeiture for failure to maintain public inspection file). See also *Riverside Broadcasting, Inc.*, 15 FCC Rcd 18322, 18323 (Enf. Bur., Inv. & Hear. 2000) (imposing a \$10,000 forfeiture for public file violations).

base forfeiture amount for all of Ms. Salazar's violations is \$39,000. Consistent with precedent, we propose to issue a forfeiture in the amount of \$39,000.

III. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Maria L. Salazar, licensee of KTCM(FM), Kingman, Kansas, is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of thirty-nine thousand dollars (\$39,000) for willfully and repeatedly violating Sections 301 and 303(q) of the Act and Sections 73.1350(a) and 17.51 of the Rules and for willfully violating Sections 11.35(a), 73.1125(a), and 73.3526 of the Rules.

16. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Maria L. Salazar SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note *NAL*/Acct. No. 200232560011 and FRN # 0003-7578-12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²¹

18. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Technical and Public Safety Division and must include *NAL*/Acct. No. 200232560011.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Maria L. Salazar at 207 W. 13th Street North, Wichita, Kansas 67203.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²¹ See 47 C.F.R. § 1.1914.